

Application No. 10/072,494  
Docket No. A1-1431  
Amendment dated August 6, 2003  
Reply to Office Action of May 9, 2003

### REMARKS

In the Office Action, the Examiner reviewed claims 1-40 of the above-identified US Patent Application, with the result that claims 12 and 32 were rejected under 35 USC §112, second paragraph, and all of the claims were rejected under either 35 USC §§102 or 103.<sup>1</sup> In response, Applicant has amended the claims as set forth above. More particularly:

Independent claims 1 and 21 have been amended to recite that the passage (50) comprises oppositely-disposed first and second portions (48,62), and that the force applying means (52,58) applies a force sufficient to push product (32) away from the second portion (62) of the passage (50), toward the first portion (48) of the passage (50), and into contact with the guide means (46). Support for these amendments can be found in claims 2 and 22 as filed, and in Applicant's specification at paragraph [0026] and Figures 4 and 6.<sup>2</sup>

Dependent claims 2 and 22 have been amended to clarify that the first portion (48) of the passage (50) is defined by a first wall portion (48) of the tubular member (22).

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<sup>1</sup> Dependent claims 12-19 and 32-39 were not explicitly stated as being rejected, but are understood to be rejected under 35 USC §102 in view of the discussion in paragraph 4 of the Office Action.

<sup>2</sup> According to MPEP §2163 II.A.3(a), "drawings alone may provide a 'written description' of an invention as required by [35 USC §112, first paragraph]," and "[i]n those instances where a visual representation can flesh out words, drawings may be used in the same manner and with the same limitations as the specification." (Citations omitted).

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Dependent claims 3 and 23 have been amended to recite that the fluid jets (52) flow across the passage (50) from the second portion (62) thereof toward the first portion (48) thereof, forcing product (32) away from the second portion (62) of the passage (50) and into contact with the guide means (46). Support for these amendments can be found in Applicant's specification at paragraph [0026] and Figures 4 and 6.

Independent claims 12 and 32 and dependent claim 14 have been amended to make consistent use of the term "wall portion" instead of "first wall portion," the latter lacking antecedent basis.

Claims 12 and 32 have been further amended to recite that the second portion (62) is diametrically opposite the wall portion (48). Support for these amendments can be found in claims 13 and 33 as filed, and in Applicant's Figures 4 and 6.

Claims 12 and 32 have also been amended to recite that the force applied by the fluid jets (52) is sufficient to push product (32) within the passage (50) away from the second portion (62) and toward the wall portion (48) so as to maintain the product (32) in contact with the splines (46). Support for these amendments can be found in Applicant's specification at paragraph [0026] and Figures 4 and 6.

Dependent claim 13 has been amended to more accurately recite that the wall portion is part of the defining means (22) and not the passage (50).

Dependent claim 33 has been amend to omit the term "defining means," which lacks antecedent basis.

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Applicant believes that the above amendments do not present new matter.

Favorable reconsideration and allowance of claims 1-40 are respectfully requested in view of the above amendments and the following remarks.

**Rejection under 35 USC §112, Second Paragraph**

Independent claims 12 and 32 were rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as his invention. In particular, the rejection was on the basis that the term "first wall portion" lacked antecedent basis. As noted above, Applicant has amended the claims to address this issue, and therefore respectfully requests withdrawal of the rejection under 35 USC §112.

**Rejection under 35 USC §102**

Independent claims 1, 12, 21 and 32 and their dependent claims 2-9, 11, 13-19, 22-29, 31, and 33-39 were rejected under 35 USC §102(b) as being anticipated by US Patent No. 5,473,967 to Frey et al. (Frey). Applicant respectfully requests reconsideration of this rejection in view of the following comments.

As noted in §2131 of the MPEP:

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the ...claim. The elements

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must be arranged as required by the claim, but this is not an  
ipsissimis verbis test, i.e. identity of terminology is not required.  
(Citations omitted).

Applicant' amended independent claims require the application of a force on a product (32) traveling downward through a passage (50), and that such force is sufficient to push the product (32) away from a second portion (62) of the passage (50), toward an oppositely-disposed first portion (48) of the passage (50), and into contact with guide means (46) disposed along the first portion (48) of the passage (50).

Under this rejection, the Examiner stated that Frey discloses "passage 37; . . . guide means 143; first portion of the passage 140; means for applying a force 90, 130." The Examiner acknowledged that Frey's "nozzles [force applying means] 90 are disposed in a circular fashion about the passage 37" and that Frey's "water jets [force applying means 130] are arranged above the circumference of the passage." More particularly, Frey's apparatus comprises nozzles 90 that *completely surround* the passage 37 and deliver fluid jets 130 that intersect at the *center* of the passage 37. See Frey at column 5, lines 6-13. As such, Frey does not disclose or suggest that the fluid jets 130 operate to urge a food product away from a one portion of the passage 37, toward an oppositely-disposed portion of the passage 37, and into contact with guide means disposed along the oppositely-disposed portion of the passage 37. Instead, Frey's water jets 130 operate to *center* food product within the guide means 140, which is contrary to Applicant's teachings and claims. See Frey at column 1, lines 54-55, and

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column 3, lines 44-46.

In view of the above, Applicant believes that Frey does not anticipate independent claims 1, 12, 21 or 32 nor any of their dependent claims under the test for anticipation set forth at MPEP §2131, and therefore respectfully requests withdrawal of the rejection under 35 USC §102.

**Rejection under 35 USC §103**

Dependent claims 10, 20, 30 and 40 were rejected under 35 USC §103(a) as being unpatentable over Frey in view of U.S. Patent No. 2,664,130 to Kubon, which was merely cited for disclosing crinkled and V-sliced cuts. In view of Applicant's above comments to the §102 rejection, it is apparent that Kubon cannot be said to supplement the teachings of Frey in order to arrive at Applicant's invention. Accordingly, Applicant also respectfully requests withdrawal of the rejection under 35 USC §103.

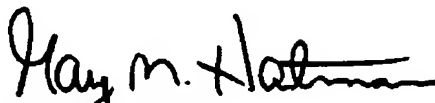
**Closing**

In view of the above, Applicant believes that all rejections to his claims have been overcome, and that the claims define patentable novelty over all the references, alone or in combination, of record. It is therefore respectfully requested that this patent application be given favorable reconsideration.

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Should the Examiner have any questions with respect to any matter now of record, Applicant's representative may be reached at (219) 462-4999.

Respectfully submitted,

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